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LEGAL DIVISION
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BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA

In the Matter of the Rates, Rating Plans, or
Rating Systems of
Travelers Companies,¹
Respondents.

File No. NC-2009-00007

NOTICE OF NONCOMPLIANCE

YOU ARE HEREBY NOTIFIED that the Insurance Commissioner of the State of California (Commissioner) has good cause to believe that the rating plans, rating systems and rates of the TRAVELERS COMPANIES (Respondents) have violated various provisions of the California Insurance Code (Cal. Ins. Code) and Title 10, California Code of Regulations (Cal. Code Regs., tit. 10,). The manner and extent of the noncompliance is set forth below.

Respondents are, and were at all relevant times, members of an insurer group individually licensed to transact the business of insurance in the State of California.

Respondents transact the business of insurance in California on risks or lines subject to the provisions of the California Insurance Code and the California Code of Regulations.

The allegations contained herein are the product of an investigation undertaken by the California Department of Insurance Field Rating and Underwriting Bureau. The examination

¹ There are twenty-eight companies comprising the Travelers Companies. The list of individual company names is attached as Exhibit 1.

1 period commenced on January 1, 2006. The examination period ended on July 31, 2006.

2 **SPECIFIC ALLEGATIONS**

3 **Private Passenger Auto**

4 1. Respondents sent renewal questionnaires, on an annual basis, to policyholders whose
5 agents had been terminated and to those policyholders who had not at-fault accidents.
6 Respondents also sent questionnaires to other Policyholders whose agents had not been
7 terminated or who did not have at-fault accidents based on a defined sample. Policyholders who
8 were recipients of the annual questionnaire who failed to return the questionnaire were
9 nonrenewed and made ineligible for reinstatement. Policyholders who were recipients of the
10 other questionnaires were not subject to adverse action for failure to return the questionnaire.

11 2. Cancellation or nonrenewal of policies of automobile insurance based on failure to
12 return the questionnaire was an act in noncompliance with Cancellation or nonrenewal of
13 policies of automobile insurance based on failure to return the questionnaire was an act in
14 noncompliance with Cal. Ins. Code § 1861.05 (a), subject to monetary penalties under Cal. Ins.
15 Code § 1858.07, because failure to collect all information needed to underwrite and rate policies
16 in a consistent manner could be unfairly discriminatory.

17 3. The number of violations is unknown. The number of violations will be determined at
18 hearing.

19 4. Insurers are required by law to provide information to insurance consumers, through
20 various means, relating to the lowest priced automobile insurance policy sold by the insurer.
21 Respondents did not provide the information as required by law. Respondents' failure to
22 provide the information as required violated Cal. Ins. Code § 672.

23 5. The number of violations is unknown. The number of violations will be determined at
24 hearing.

25 6. Respondents required notarization of the accident self-certification declaration form
26 described in Cal. Code Regs., tit. 10, § 2632.13 (i), referred to by Respondents as a "California
27 Accident and Comprehensive Loss Detail Form." There is no provision in the applicable law
28 requiring, or allowing insurers to require, notarization of the declaration described in Cal. Code

1 Regs., tit. 10, § 2632.13 (i). In those cases where policyholders did not have the declaration
2 notarized the policies were canceled.

3 7. Cancellation or nonrenewal of policies of automobile insurance based on the notary
4 requirement was an act in noncompliance with Cal. Ins. Code § 1861.03 (c) (1), subject to
5 monetary penalties under Cal. Ins. Code § 1858.07, because failure to return the form is not one
6 of the statutory criteria upon which a valid cancellation or nonrenewal may be based.

7 8. The number of violations is unknown. The number of violations will be determined at
8 hearing.

9 9. Respondents required new business risks who had, within the previous five years, two or
10 more not at-fault accidents (of any payout amount) or two or more comprehensive losses over
11 one thousand dollars, to complete a “California Accident and Comprehensive Loss Detail
12 Form.” If the insured failed to return the form, the policy was canceled and made ineligible for
13 reinstatement.

14 10. Cancellation or nonrenewal of policies of automobile insurance based on failure to
15 return the form was an act in noncompliance with Cal. Ins. Code § 1861.03 (c) (1), subject to
16 monetary penalties under Cal. Ins. Code § 1858.07, because failure to return the form is not one
17 of the statutory criteria upon which a valid cancellation or nonrenewal may be based.

18 11. Cancellation or nonrenewal of policies of automobile insurance based on failure to
19 return the form was an act in noncompliance with Cal. Code Regs., tit. 10, § 2632.19, and
20 therefore the enabling statute, Ins. Code § 1861.03 (c) (1), subject to monetary penalties under
21 Cal. Ins. Code § 1858.07, because failure to return the form was not an increase in the hazard
22 insured against and not one of the criteria upon which cancellation of a policy of automobile
23 insurance may be based.

24 12. The number of violations is unknown. The number of violations will be determined at
25 hearing.

26 13. Respondents used something referred to as “admitted incidents” in rating automobile
27 insurance policies. In rating the policies all “admitted incidents” including those not reported on
28 the Motor Vehicle Report (MVR) or Comprehensive Loss Underwriting Exchange (CLUE)

1 report were added to the driver safety record.

2 14. Driver safety information must be based upon the public record of traffic violation
3 convictions available from public records. Chargeability for at-fault accidents shall be
4 determined according to prescribed procedures in California statutes and regulations.
5 Respondents' procedures did not comply with the requirements set forth in Cal. Code Regs., tit.
6 10, §§ 2632.5 (c) (1) (A) and 2632.13 (a), (f) and (g) and were therefore in noncompliance with
7 the enabling statute Ins. Code § 1861.02 (a) (4), subject to monetary penalties under Cal. Ins.
8 Code § 1858.07.

9 15. The number of violations is unknown. The number of violations will be determined at
10 hearing.

11 16. In determining eligibility to purchase a good driver discount policy Respondents made
12 insufficient attempts to verify driving safety records as required by law.

13 17. Respondents' failure to verify driving safety records was in noncompliance with Cal.
14 Code Regs., tit. 10, § 2632.5 (c) (1) (A) and therefore in noncompliance with the enabling
15 statute, Cal. Ins. Code § 1861.02 (a) (1), subject to monetary penalties under Cal. Ins. Code §
16 1858.07.

17 18. Respondents' failure to verify whether the applicant was principally at-fault was in
18 noncompliance with Cal. Code Regs., tit. 10, § 2632.13 (a) and therefore in noncompliance with
19 the enabling statute, Cal. Ins. Code § 1861.025, subject to monetary penalties under Cal. Ins.
20 Code § 1858.07.

21 19. Failure to verify the driving safety record violated Cal. Ins. Code § 1861.02, subject to
22 monetary penalties under Cal. Ins. Code § 1858.07 as it necessarily prevented eligible good
23 drivers from purchasing good driver discount policies from the insurer of their choice.

24 20. The number of violations is unknown. The number of violations will be determined at
25 hearing.

26 21. Respondents' failed to maintain records relating to steps taken by their agents and direct
27 business representatives in making principally at-fault determinations. There were no records
28 verifying the use of the procedures set forth in Cal. Code Regs., tit. 10, §§ 2632.13 (f) and (g) in

1 making principally at-fault determinations. The procedures set forth in Cal. Code Regs., tit. 10,
2 §§ 2632.13 (f) and (g) are required. Specifically Respondents did not maintain records relating
3 to their verification of accidents reported by CLUE.

4 22. Failure to maintain documentation as required was - in and of itself – an act in
5 noncompliance with Cal. Code Regs., tit. 10, § 2360.6, and therefore in noncompliance with the
6 enabling statute, Cal. Ins. Code § 1857, subject to monetary penalties under Cal. Ins. Code §
7 1858.07.

8 23. The number of violations is unknown. The number of violations will be determined at
9 hearing.

10 24. When policyholders purchased policies through Respondents' call-in center or via the
11 internet policyholders were mailed a "Quote Acceptance Form" and a "State Coverage Form."
12 Respondents informed policyholders that if the Quote Acceptance Form and State Coverage
13 Form were not signed and returned within 30 days the policies would be canceled. Respondents
14 canceled policies of automobile insurance based upon failure to return the forms. Respondents
15 quoted fictitious regulations to support use of these forms and cancellations of policies. The
16 letter accompanying the forms contained the following language:

17 California insurance regulations require the Quote Acceptance Form and State
18 Coverage Forms to be signed by you and kept on file in our office. In order to
19 comply with these regulations, we need to receive these forms within the next
30 days. If they are not received, we will cancel the coverage.

20 25. Cancelling automobile insurance policies for failure to return the forms violated Cal.
21 Code Regs., tit. 10, § 2632.19 (b) (1), and therefore the enabling statute, Cal. Ins. Code §
22 1861.03 (c) (1), subject to monetary penalties under Cal. Ins. Code § 1858.07, because failure to
23 return the form was not an increase in the hazard insured against and not one of the criteria upon
24 which cancellation of a policy of automobile insurance may be based.

25 26. The number of violations is unknown. The number of violations will be determined at
26 hearing.

27 27. Respondents had a "Policy Verification Program" which consisted of a telephone
28 interview to verify information provided while applying for automobile insurance.

1 Policyholders who purchased insurance through a call center or on the internet were required to
2 submit to the "Policy Verification Program." In those cases where Respondents were unable to
3 conduct the telephone interview the policy was canceled.

4 28. Cancelling automobile insurance policies for failure to conduct a telephone interview
5 violated Cal. Code Regs., tit. 10, §§ 2360.0 (b), 2360.2 and §2632.19 (b) (1) and was therefore
6 in noncompliance with the enabling statute, Cal. Ins. Code § 1861.03 (c) (1), subject to monetary
7 penalties under Cal. Ins. Code § 1858.07, as failure to conduct a telephone interview is not one
8 of the criteria upon which cancellation of automobile insurance may be based.

9 29. The number of violations is unknown. The number of violations will be determined at
10 hearing.

11 30. Respondents failed to provide to applicants and policyholders a Notice of Information
12 regarding their use of CLUE as required by Cal. Ins. Code § 791.04 (a) (1) (B).

13 31. Respondents' failure to provide the Notice of Information to applicants and
14 policyholders violated Cal. Ins. Code § 791.04 (a) (1) (B), subject to monetary penalties under
15 Cal. Ins. Code § 791.19.

16 32. The number of violations is unknown. The number of violations will be determined at
17 hearing.

18 33. Uninsured motorist coverage is not a required coverage in California. In some cases
19 Respondents' applicants and policyholders chose to reject uninsured motorist coverage. In cases
20 where the policyholder or applicant rejected uninsured motorist coverage Respondents mailed
21 to the applicant or policyholder an "Uninsured Motorist Rejection Form" which the applicant or
22 policyholder was required to sign and return. Where the policyholder or applicant failed to
23 return the "Uninsured Motorist Rejection Form" Respondents canceled or nonrenewed
24 coverage. In addition Respondents' filed underwriting guidelines did not call for cancellation or
25 nonrenewal for failure to return the form. Instead Respondents' guidelines called for the policy
26 to be issued with uninsured motorist limits equal to the bodily injury limits.

27 34. Cancelling automobile insurance policies for failure to return the forms violated Cal. Ins.
28 Code § 1861.03 (c) (1), subject to monetary penalties under Cal. Ins. Code § 1858.07, as failure

1 to return the form is not one of the criteria upon which cancellation of automobile insurance
2 may be based.

3 35. The number of violations is unknown. The number of violations will be determined at
4 hearing.

5 36. Cal. Ins. Code § 510 contains very specific requirements regarding information that
6 must be communicated to the policyholder at the inception of the policy. Respondents'
7 "Consumer Services Disclosure Form" did not meet the disclosure requirements.

8 37. Respondents violated Cal. Ins. Code § 510 by failing to provide the required
9 information.

10 38. The number of acts in noncompliance is unknown. The number of acts in
11 noncompliance will be determined at hearing.

12 39. Respondents defined a private passenger auto, for eligibility purposes, as "one owned by
13 the insured, or leased under contract for a continuous period of at least six months."

14 40. Use of this eligibility guideline violated Cal. Code Regs., tit. 10, §§ 2360.0 (b), 2360.1
15 and 2360.2 and therefore violated the enabling statute Cal. Ins. Code § 1861.05, subject to
16 monetary penalties Cal. Ins. Code § 1858.07, because the rule was not substantially related to
17 the risk of loss.

18 41. The number of violations is unknown. The number of violations will be determined at
19 hearing.

20 42. Respondents "declaration page" ² did not list the policy inception hours as required by
21 Cal. Ins. Code § 460.

22 43. Respondents' failure to include the policy inception hours was in noncompliance with
23 Cal. Ins. Code § 460.

24 44. The number of acts in noncompliance is unknown. The number of acts in
25 noncompliance will be determined at hearing.

26 45. Respondents did not identify the name of the underwriting company on correspondence
27

28 ² A declarations page is generally a one page synopsis which lists the insurance company, their address, name of the policyholder, starting and ending dates of coverage, and the actual coverages in the insurance contract.

1 reviewed in policyholder files.

2 46. Failing to identify the underwriting company was an act in noncompliance with Cal. Ins.
3 Code § 880

4 47. The number of acts in noncompliance is unknown. The number of acts in
5 noncompliance will be determined at hearing.

6 **Homeowners Multiple Peril**

7 48. In property lines Respondents failed to maintain documentation regarding how the
8 policy value calculation was conducted and failed to maintain documentation showing risks
9 were insured 100% to value as required by the Respondents' underwriting guidelines or to show
10 whether Respondents followed filed underwriting guidelines in making the valuation
11 calculation.

12 49. Failure to maintain documentation as required was an act in noncompliance with Cal.
13 Code Regs., tit. 10, § 2360.6, and therefore in noncompliance with the enabling statute, Cal. Ins.
14 Code § 1857, subject to monetary penalties under Cal. Ins. Code § 1858.07.

15 50. Failure to maintain documentation in support of the rate charged creates a presumption
16 Respondents applied rates that were excessive, inadequate, unfairly discriminatory or otherwise
17 in violation of the law in noncompliance with Cal. Ins. Code § 1861.05 (a), subject to monetary
18 penalties under Cal. Ins. Code § 1858.07.

19 51. The number of acts in noncompliance is unknown. The number of acts in
20 noncompliance will be determined at hearing.

21 52. Pursuant to filed eligibility guidelines Respondents' agents were required to use a
22 computer program called "RiskMeter" to determine whether the insured property was located in
23 an area where plant life / brush created what Respondents considered an undue risk of property
24 damage due to wildfire. Pursuant to Respondents' filed eligibility guidelines agents were
25 prohibited from writing homeowners insurance on risks located in areas identified by the
26 "RiskMeter" to be unacceptable. Notwithstanding these limitations on eligibility agents bound
27 coverage on property located in areas considered unacceptable by the "RiskMeter" program in
28 direct contravention of underwriting guidelines. Once these policies were submitted and

1 reviewed by Respondents and it was determined the risks were located in unacceptable areas
2 pursuant to application of "RiskMeter" the policies were canceled.

3 53. Failure to adhere to filed eligibility guidelines violated Cal. Code Regs., tit. 10. §
4 2360.2, and thereby violating the enabling statute § 1861.05 (a), subject to monetary penalties
5 under Cal. Ins. Code § 1858.07, because where eligibility guidelines are not adhered to and
6 what is applied is done so in an unfair and inconsistent manner, the actual eligibility guidelines
7 lack the specificity, consistency and objectivity required by law.

8 54. The number of acts in noncompliance is unknown. The number of acts in
9 noncompliance will be determined at hearing.

10 55. Respondents had no procedure in place to review, re-evaluate and or re-underwrite risks
11 consistently or accurately. On renewal in property lines of insurance Respondents made no
12 attempt to determine correct tier placement between the standard tiers and the lower priced
13 "preferred" tiers.

14 56. The lack of specific objective underwriting guidelines violated Cal. Ins. Code § 1861.05,
15 subject to monetary penalties under Cal. Ins. Code § 1858.07, because it necessarily resulted
16 unfairly discriminatory rates.

17 57. The lack of specific objective underwriting guidelines was in noncompliance with Cal.
18 Code Regs., tit. 10, § 2360.2, thereby violating the enabling statute Cal. Ins. Code § 1861.05 (a),
19 subject to subject to monetary penalties under Cal. Ins. Code § 1858.07, because of the lack of
20 specificity, consistency and objectivity required by law.

21 58. Failure to offer to each insured the lowest premium for which the insured qualified
22 violated Cal. Code Regs., tit. 10, § 2360.3, thereby violating the enabling statute Cal. Ins. Code §
23 1861.05 (a), subject to subject to monetary penalties under Cal. Ins. Code § 1858.07.

24 59. Failure to review upon renewal and adjust the premium charged to the insured, as
25 necessary, to reflect the lowest premium for which the insured qualified at that time was a
26 violation of the requirements set forth in Cal. Code Regs., tit. 10, § 2360.4, and therefore in
27 noncompliance with the enabling statute Cal. Ins. Code § 1861.05 (a), subject to monetary
28 penalties under Cal. Ins. Code § 1858.07.

1 60. The number of acts in noncompliance is unknown. The number of acts in
2 noncompliance will be determined at hearing.

3 61. Respondents' nonrenewal notices in property lines did not contain certain, specific
4 information required by law.

5 62. Respondents' failure to include the specific information required in nonrenewal notices
6 as required violated Cal. Ins. Code § 678 (a) (2) (C).

7 63. The number of acts in noncompliance is unknown. The number of acts in
8 noncompliance will be determined at hearing.

9 64. Respondents' refused to insure a significant number of properties where those properties
10 were not insured at the time of the application. However, Respondents' eligibility guidelines
11 contained no such eligibility restriction.

12 65. Inconsistent or arbitrary application of unfiled eligibility guidelines violated Cal. Code
13 Regs., tit. 10, § 2360.2, thereby violated the enabling statute Cal. Ins. Code § 1861.05 (a). These
14 acts in noncompliance are subject to subject to monetary penalties under Cal. Ins. Code §
15 1858.07.

16 66. The number of acts in noncompliance is unknown. The number of acts in
17 noncompliance will be determined at hearing.

18 **Commercial Multiple Peril**

19 67. Respondents misapplied The Insurance Services Office, Inc.³ (ISO) Rule 90-920, in
20 rating California Commercial Multi-Peril (CMP) lines, using judgment rating where it was not
21 appropriate. In doing so Respondents charged unfiled, unapproved rates.

22 68. The charging of unfiled or unapproved rates was in noncompliance with Cal. Ins. Code §
23 1861.01 (c), subject to monetary penalties under Cal. Ins. Code § 1858.07.

24 69. The charging of unfiled or unapproved rates resulted in rates that were excessive,
25 inadequate, unfairly discriminatory or otherwise in violation of the law in noncompliance with

26 ³ Insurance Services Office, Inc. (ISO), or ISO Mitigation, Inc., a subsidiary of Verisk Analytics, is a provider of
27 data, underwriting, risk management and legal/regulatory services (with special focus on community fire-protection
28 efforts and Building Code Effectiveness Evaluation) to property-casualty insurers and other clients. Headquartered in
Jersey City, New Jersey, the organization serves clients with offices throughout the United States, along with
international operations offices in the United Kingdom, Israel, Germany, India and China.

1 Cal. Ins. Code § 1861.05 (a), subject to monetary penalties under Cal. Ins. Code § 1858.07.

2 70. The number of acts in noncompliance is unknown. The number of acts in
3 noncompliance will be determined at hearing.

4 71. On June 21, 2005, Respondents filed with CDI a rating plan which contained property
5 package modification factors.⁴ These factors were approved and it was understood by CDI that
6 the new factors would replace the previously approved factors. However, Respondents did not
7 apply the property package modification factors contained in the June 21, 2005 rate plan.
8 Instead Respondents continued to rate policies using modification factors from a December 2,
9 1996 rating plan. CDI maintains that upon approval of the June 21, 2005, rating plan, the
10 previously approved rating plan was no longer approved and the continued application of the
11 modification factors contained in the previous rating plan was the application of unapproved
12 rates.

13 72. The charging of unapproved rates was in noncompliance with Cal. Ins. Code § 1861.01
14 (c), subject to monetary penalties under Cal. Ins. Code § 1858.07.

15 73. The application of unapproved rates resulted in rates that were excessive, inadequate,
16 unfairly discriminatory or otherwise in violation of the law in noncompliance with Cal. Ins.
17 Code § 1861.05 (a), subject to monetary penalties under Cal. Ins. Code § 1858.07.

18 74. The number of acts in noncompliance is unknown. The number of acts in
19 noncompliance will be determined at hearing.

20 75. Respondents offered a general liability product entitled Ultra-Pac. The Ultra-Pac general
21 liability rating rules permitted the use of underwriting judgment in the application of additional
22 credits or debits. This rule was referred to as the Management Control Factor (MCF). Credits or
23 debits of up to a maximum of 25% were allowed. To qualify for the MCF policyholders agreed
24 to comply with engineering recommendations and to use the Travelers 1-800 telephone
25

26 ⁴ Package Modification Factors are credits that apply to regular policy premiums when the commercial package policy
27 includes both property and liability coverages. The insured receives a package discount that was determined by applying the
28 appropriate package modification factors to the premiums for the eligible coverage parts. Example: A package modification factor
of 0.85 means that the premium for that coverage will be 85% of the premium that would have applied if the coverage part were
issued as a monoline policy. Package modification factors reflect the type of risk, the coverage part, *and* underwriting
acceptability.

1 reporting system to report claims. The files contained no documentation that policyholders
2 complied with the requirements. In addition there was no documentation supporting application
3 of credits and debits.

4 76. Failure to maintain documentation in support of the rate charged was in noncompliance
5 Cal. Code Regs., tit. 10, § 2360.6, and therefore in noncompliance with the enabling statute,
6 Cal. Ins. Code § 1857, subject to monetary penalties under Cal. Ins. Code § 1858.07.

7 77. Failure to maintain documentation in support of the rate charged creates a presumption
8 Respondents applied rates that were excessive, inadequate, unfairly discriminatory or otherwise
9 in violation of the law in noncompliance with Cal. Ins. Code § 1861.05 (a), subject to monetary
10 penalties under Cal. Ins. Code § 1858.07.

11 78. The number of acts in noncompliance is unknown. The number of acts in
12 noncompliance will be determined at hearing.

13 79. Respondents filed expense modification plan, which was used in addition to the MCF to
14 modify policy premium, did not identify the criteria and parameters that should be considered in
15 making premium modifications relating to expenses. The plan did not provide the maximum or
16 minimum amount of modification for each individual characteristic under the plan or the
17 maximum or minimum allowable modification allowable in general. The filed plan contained an
18 ambiguous rating rule which provided that rates contemplated the standard allowance for
19 expenses, but if expenses varied from standard, a modification factor could be applied to reflect
20 the difference. Rating worksheets showed that underwriting judgments were used in assigning a
21 credit/debit of +/-25% based on four criteria for evaluating expenses that were vague and
22 subjective. These subjective criteria were not included in the filed plan and resulted in unfair
23 rate discrimination as similar risks were subject to dissimilar treatment due to the vagueness
24 inherent in the plan. Expense modifications must be adequately supported by objective factual
25 data or information and is applied in accordance with established objective standards.

26 80. The vagueness inherent in the expense modification plan resulted in rates that were
27 excessive, inadequate, unfairly discriminatory or otherwise in violation of the law in
28 noncompliance with Cal. Ins. Code § 1861.05 (a), subject to monetary penalties under Cal. Ins.

1 Code § 1858.07.

2 81. The expense modification plan was so vague it was impossible to maintain
3 documentation in support of the rate charged in noncompliance Cal. Code Regs., tit. 10, §
4 2360.6, and also therefore in noncompliance with the enabling statute Cal. Ins. Code § 1857,
5 subject to monetary penalties under Cal. Ins. Code § 1858.07.

6 82. Application of the unfiled portions of the expense modification plan was in
7 noncompliance with Cal. Ins. Code § 1861.01 (c) as application of those portions of the plan
8 were never approved.

9 83. The number of acts in noncompliance is unknown. The number of acts in
10 noncompliance will be determined at hearing.

11 84. Respondents sold policies through a “Select Accounts Business Owners” program.
12 Respondents’ underwriting guidelines for this program required an insurance-to-value (IVG)
13 calculation for *new business* if the building limit⁵ was greater than five hundred thousand
14 dollars. Respondents’ underwriting guidelines for this program required an IVG calculation for
15 *renewal business* where the building limit was greater than five million dollars. Respondents did
16 not apply these rules in a consistent manner. Nor did Respondents maintain adequate
17 documentation in support of their IVG calculations in cases where an IVG calculation was
18 performed.

19 85. Failure to maintain documentation in support of the rates charged was in noncompliance
20 with Cal. Code Regs., tit. 10, § 2360.6 and therefore in noncompliance with the enabling statute
21 Cal. Ins. Code § 1861.05, subject to monetary penalties under Cal. Ins. Code § 1858.07.

22 86. Failure to consistently apply the IVG calculation was in noncompliance with Cal. Ins.
23 Code § 1861.05 as it resulted in unfairly discriminatory rates.

24 87. The number of acts in noncompliance is unknown. The number of acts in
25 noncompliance will be determined at hearing.

26 88. Respondents applied rating rules called loss free credits in rating Select Accounts
27

28 ⁵ The building limit a calculation designed to identify the cost to rebuild the commercial building. The calculation
also includes the value of permanently installed fixtures, machinery and equipment.

1 business owners policies. Loss free credits are discounts based on claims history. Respondents
2 had previously made a rate filing that contained loss free credits, which included a description
3 of how the credits were to be applied. That rate filing was approved. However, Respondents did
4 not apply these credits in the manner described in the approved rate filing but applied them in
5 ways that had never been filed and approved.

6 89. Respondents' failure to adhere to a filed and approved rating plan, specifically as to
7 application of the loss free credits, was in noncompliance with Cal. Ins. Code § 1861.05, subject
8 to monetary penalties under Cal. Ins. Code § 1858.07, as application of these credits necessarily
9 resulted in the charging of an unapproved rate and / or in rates that were excessive, inadequate,
10 unfairly discriminatory or otherwise in violation of the law.

11 90. The number of acts in noncompliance is unknown. The number of acts in
12 noncompliance will be determined at hearing.

13 91. Respondents failed to maintain documentation in the Select Account program sufficient
14 to show the rate calculation was reasonable and in keeping with Respondents' rating rules.
15 Examples of this lack of documentation included no documentation in support of credits applied
16 at policy inception and a lack of documentation in support of schedule rate modifications on
17 renewal describing the change in risk exposure and why the change in risk exposure was
18 sufficient to justify rating modifications.

19 92. Failure to maintain documentation in support of the rate charged was in noncompliance
20 Cal. Code Regs., tit. 10, § 2360.6, and therefore in noncompliance with the enabling statute,
21 Cal. Ins. Code § 1857, subject to monetary penalties under Cal. Ins. Code § 1858.07.

22 93. Failure to maintain documentation in support of the rate charged creates a presumption
23 Respondents applied rates that were excessive, inadequate, unfairly discriminatory or otherwise
24 in violation of the law in noncompliance with Cal. Ins. Code § 1861.05 (a), subject to monetary
25 penalties under Cal. Ins. Code § 1858.07.

26 94. The number of acts in noncompliance is unknown. The number of acts in
27 noncompliance will be determined at hearing.

28 95. Respondents sold a product called Vision Pack. Respondents had a filed rating plan

1 which included risk characteristics to be used in rating Vision Pack policies. Respondents filed
2 a schedule rating worksheet that applied the risk characteristics with their filed rating plan.
3 However, the risk characteristics actually used by Respondents did not match the risk
4 characteristics in the filed plan. The filed plan contained five risk characteristics: management
5 and premises +/-10%; building conditions +/-5%; employees +/-5%; and equipment +/-5%. The
6 plan used by the Respondents contained six criteria: management +/-10%; personnel +/-6%.;
7 premises +/-6%.; equipment +/-6%.; location +/-6% and damageability of property +/-6%. It
8 should be noted that all of the alleged acts of noncompliance described in this paragraph were
9 the responsibility of one underwriter who was using an incorrect form.

10 96. Respondents' failure to adhere to the filed and approved rating plan was in
11 noncompliance with Cal. Ins. Code § 1861.05, subject to monetary penalties under Cal. Ins.
12 Code § 1858.07, as application of unfiled risk characteristics in rating policies resulted in rates
13 that were excessive, inadequate, unfairly discriminatory or otherwise in violation of the law.

14 97. Respondents' failure to adhere to a filed and approved rating plan was in noncompliance
15 with Cal. Ins. Code § 1861.01, subject to monetary penalties under Cal. Ins. Code § 1858.07, as
16 the rules were not applied in a manner consistent with the rules in the approved rate filing.

17 98. The number of acts in noncompliance is unknown. The number of acts in
18 noncompliance will be determined at hearing.

19 99. Respondents sold insurance products through a program called USI Rental Specialties
20 Program. Respondents filed an experience rating plan as part of their approved rate filing.
21 Respondents failed to apply their filed experience rating plan in a fair and consistent manner but
22 instead significantly deviated from application of that rating plan.

23 100. Respondents' failure to adhere to a filed and approved rating plan was in noncompliance
24 with Cal. Ins. Code § 1861.05, subject to monetary penalties under Cal. Ins. Code § 1858.07, as
25 application of the unfiled risk characteristics in rating policies resulted in rates that were
26 excessive, inadequate, unfairly discriminatory or otherwise in violation of the law.

27 101. Respondents' failure to adhere to a filed and approved rating plan was in noncompliance
28 with Cal. Ins. Code § 1861.01, subject to monetary penalties under Cal. Ins. Code § 1858.07, as

1 the rules were not applied in a manner consistent with the rules in the approved rate filing.

2 102. The number of acts in noncompliance is unknown. The number of acts in
3 noncompliance will be determined at hearing.

4 103. Respondents failed to maintain adequate rating documentation in the USI Rental
5 Specialties program for the reasoning behind the “A” rate chosen. There was no documentation
6 memorializing or supporting rates chosen from among the filed rate range. There was no
7 documentation supporting increases and decreases in rates. There was no documentation
8 explaining or identifying any material change in risk exposure that may have justified the rate
9 changes that were made. There was no documentation as to the rationale behind rating
10 decisions.

11 104. Failure to maintain documentation in support of the rate charged was in noncompliance
12 Cal. Code Regs., tit. 10, § 2360.6 and therefore the enabling statute Cal. Ins. Code § 1857,
13 subject to monetary penalties under Cal. Ins. Code § 1858.07.

14 105. The number of acts in noncompliance is unknown. The number of acts in
15 noncompliance will be determined at hearing.

16 106. In rating products in the USI Rental Specialties Program Respondents applied a rate for
17 one class code that was neither filed with nor approved by the Commissioner.

18 107. Applying unfiled and unapproved rates is an act in noncompliance with Cal. Ins. Code §
19 1861.01 (c), subject to monetary penalties under Cal. Ins. Code § 1858.07.

20 108. Applying unfiled and unapproved rates is an act in noncompliance with Cal. Ins. Code §
21 1861.05 (a), subject to monetary penalties under Cal. Ins. Code § 1858.07.

22 109. The number of acts in noncompliance is unknown. The number of acts in
23 noncompliance will be determined at hearing.

24 110. The underwriting guidelines for the USI Rental Specialties Program provided that all
25 buildings with values in excess of \$750,000 are to be evaluated using the Boeckh cost analysis
26 to ensure proper insurance to value. The rules also allowed for the use of a quick cost guide for
27 buildings under \$750,000. Respondents failed to document the insurance to value calculation.
28 Additionally, the guidelines were vague in that “proper insurance to value” was not defined and

could be interpreted subjectively, leading to possible dissimilar treatment of similar risks.

111. Failure to maintain documentation in support of the rate charged was in noncompliance Cal. Code Regs., tit. 10, § 2360.6, and therefore in noncompliance with the enabling statute, Cal. Ins. Code § 1857, subject to monetary penalties under Cal. Ins. Code § 1858.07.

112. Failure to maintain documentation in support of the rate charged creates a presumption Respondents applied rates that were excessive, inadequate, unfairly discriminatory or otherwise in violation of the law in noncompliance with Cal. Ins. Code § 1861.05 (a), subject to monetary penalties under Cal. Ins. Code § 1858.07.

113. The law requires insurers have in place specific, objective underwriting guidelines and those guidelines must be applied in a fair and consistent manner. Respondents' application of vague underwriting guidelines was in noncompliance with Cal. Code Regs., tit. 10, § 2360.2 which in turn was in noncompliance with the enabling statute, Cal. Ins. Code § 1861.05, subject to monetary penalties under Cal. Ins. Code § 1858.07

114. The number of acts in noncompliance is unknown. The number of acts in noncompliance will be determined at hearing.

115. There was a significant lack of documentation supporting underwriting and rating in USI Rental Specialties Program associated with "premium" policy eligibility and how modifications, both credits and debits, were applied in rating and underwriting "premium" policies. There was no documentation in support of annual premium modifications. There was no documentation relating to changes to the risk prompting changes in the rate charged. There was no documentation relating to the determination of "premium" or "average," or assessment of credits or debits. All underwriting and rating decisions must be properly documented.

116. Failure to maintain documentation in support of the rate charged was in noncompliance Cal. Code Regs., tit. 10, § 2360.6, and therefore in noncompliance with the enabling statute, Cal. Ins. Code § 1857, subject to monetary penalties under Cal. Ins. Code § 1858.07.

117. Failure to maintain documentation in support of the rate charged creates a presumption Respondents applied rates that were excessive, inadequate, unfairly discriminatory or otherwise in violation of the law in noncompliance with Cal. Ins. Code § 1861.05 (a), subject to monetary

1 penalties under Cal. Ins. Code § 1858.07.

2 118. The number of acts in noncompliance is unknown. The number of acts in
3 noncompliance will be determined at hearing.

4 119. The Charity First program offered various insurance products to not-for-profit social
5 services agencies and other not-for-profit organizations. There were significant errors in the
6 rating and underwriting of these policies. A significant number of files lacked a company
7 placement worksheet. Some Charity First commercial multi-peril policies were not rated in the
8 pricing tier for which the insured qualified. Some Charity First risks were charged excessive
9 rates. In other cases Charity First policyholders were charged inadequate rates. Failure to place
10 risks into the pricing tier for which they qualify necessarily resulted in unfairly discriminatory
11 rates. A significant number of files included worksheets that contained rating errors.
12 Additionally a significant number of placement worksheets relied on rating criteria not
13 contained in the approved filing.

14 120. Failure to maintain documentation in support of the rate charged was in noncompliance
15 Cal. Code Regs., tit. 10, § 2360.6, and therefore in noncompliance with the enabling statute,
16 Cal. Ins. Code § 1857, subject to monetary penalties under Cal. Ins. Code § 1858.07.

17 121. Failure to maintain documentation in support of the rate charged creates a presumption
18 Respondents applied rates that were excessive, inadequate, unfairly discriminatory or otherwise
19 in violation of the law in noncompliance with Cal. Ins. Code § 1861.05 (a), subject to monetary
20 penalties under Cal. Ins. Code § 1858.07. In this case both excessive and inadequate rates were
21 identified.

22 122. The law requires insurers have in place specific, objective underwriting guidelines and
23 those guidelines must be applied in a fair and consistent manner. Respondents' inconsistent
24 application of underwriting guidelines resulted in policies not being rated in the pricing tier for
25 which the risk qualified and was therefore in noncompliance with Cal. Code Regs., tit. 10, §§
26 2360.2, which in turn was in noncompliance with the enabling statute, Cal. Ins. Code § 1861.05,
27 subject to monetary penalties under Cal. Ins. Code § 1858.07

28 123. Application of unfiled rating rules was in noncompliance with Cal. Ins. Code § 1861.01

1 (c), subject to monetary penalties under Cal. Ins. Code § 1858.07 as the rating rules were
2 applied in a manner not contemplated in the approved filing.

3 124. Respondents' inconsistent application of rating rules was in noncompliance with the Cal.
4 Ins. Code § 1861.05 subject to monetary penalties under Cal. Ins. Code § 1858.07.

5 125. The number of acts in noncompliance is unknown. The number of acts in
6 noncompliance will be determined at hearing.

7 126. Respondents' Charity First Program, for general liability coverage, applied underwriting
8 rules that allowed for an automatic five percent (5%) increase in limits on renewal for building
9 and business personal property and sales and / or payroll. This factor was not filed with the
10 Department and it was inconsistently applied resulting in a significant number of rating errors.

11 127. The application of unfiled rating rules was in noncompliance with Cal. Ins. Code §
12 1861.01 (c), subject to monetary penalties under Cal. Ins. Code § 1858.07.

13 128. The application of unfiled rating rules necessarily resulted in the charging of rates that
14 are excessive, inadequate, unfairly discriminatory or otherwise in violation of the law in
15 noncompliance with Cal. Ins. Code § 1861.05 (a), subject to monetary penalties under Cal. Ins.
16 Code § 1858.07.

17 129. The number of acts in noncompliance is unknown. The number of acts in
18 noncompliance will be determined at hearing.

19 130. In the Charity First Program, in rating commercial multi-peril risks, rating modifications
20 were made on renewal. The rating modifications appeared to be of a type permitted by
21 Respondents' Premium Modification Plan (PMP). However, in cases where the modifications
22 were made, there was no documentation evidencing a material change in the insured's risk
23 characteristics.

24 131. Failure to maintain documentation in support of the rate charged was in noncompliance
25 Cal. Code Regs., tit. 10, § 2360.6, and therefore in noncompliance with the enabling statute,
26 Cal. Ins. Code § 1857, subject to monetary penalties under Cal. Ins. Code § 1858.07.

27 132. Failure to maintain documentation in support of the rate charged creates a presumption
28 Respondents charged rates that were excessive, inadequate, unfairly discriminatory or otherwise

1 in violation of the law in noncompliance with Cal. Ins. Code § 1861.05 (a), subject to monetary
2 penalties under Cal. Ins. Code § 1858.07.

3 133. The number of acts in noncompliance is unknown. The number of acts in
4 noncompliance will be determined at hearing.

5 134. In some cases new business risks in Charity First's commercial multi-peril program
6 were declined due to a \$2,000 minimum premium eligibility requirement. In other cases new
7 business risks were written with premium sizes of less than \$2,000. The \$2,000 minimum
8 premium requirement was an unfiled eligibility guideline. Respondents' filed eligibility
9 guidelines did not have a \$2,000 minimum premium requirement.

10 135. Failure to adhere to filed eligibility guidelines and instead applying unfiled eligibility
11 guidelines in an inconsistent manner in noncompliance with Cal. Ins. Code § 1861.05 (a),
12 subject to monetary penalties under Cal. Ins. Code § 1858.07.

13 136. The number of acts in noncompliance is unknown. The number of acts in
14 noncompliance will be determined at hearing.

15 137. Commercial multi-peril risks in the Charity First Program with premium size of less
16 than \$2,000 were renewed. However on many occasions new risks with less than \$2,000 in
17 premium were declined. This procedure resulted in unfairly discriminatory treatment between
18 new and renewal risks. The \$2,000 premium threshold requirement was not included in the filed
19 program eligibility guidelines and was applied in an unfair and inconsistent manner.

20 138. Failure to adhere to filed eligibility guidelines and instead applying unfiled eligibility
21 guidelines in an inconsistent manner was in noncompliance with Cal. Ins. Code § 1861.05 (a),
22 subject to monetary penalties under Cal. Ins. Code § 1858.07.

23 139. The number of acts in noncompliance is unknown. The number of acts in
24 noncompliance will be determined at hearing.

25 140. Respondents offered a line of habitational insurance called South 52-39. In the context
26 of commercial insurance habitational insurance typically refers to coverage designed for
27 commercial apartment buildings, condos, multi-unit dwellings, hotels and motels. Respondents
28 developed and implemented rates for four "A" rated classification codes without having

1 received approval from the Department.

2 141. The application of unfiled rating rules was in noncompliance with Cal. Ins. Code §
3 1861.01 (c), subject to monetary penalties under Cal. Ins. Code § 1858.07.

4 142. The number of acts in noncompliance is unknown. The number of acts in
5 noncompliance will be determined at hearing.

6 143. In rating the South 52-39 Habitational program Respondents used a tiered pricing
7 program that categorized risks into one of four levels, superior, preferred, standard or
8 substandard. Tier placement depended on the assessment of five criteria: length of time in
9 business; financial strength; hazards and controls; safety culture; and risk transfer. The files
10 contained inadequate documentation to support the placement of risks into one tier versus
11 another as the only criteria able to be verified was the length of time in business.

12 144. Failure to maintain documentation in support of the rate charged was in noncompliance
13 Cal. Code Regs., tit. 10, § 2360.6, and therefore in noncompliance with the enabling statute,
14 Cal. Ins. Code § 1857, subject to monetary penalties under Cal. Ins. Code § 1858.07.

15 145. Failure to maintain documentation in support of the rate charged creates a presumption
16 Respondents applied rates that were excessive, inadequate, unfairly discriminatory or otherwise
17 in violation of the law in noncompliance with Cal. Ins. Code § 1861.05 (a), subject to monetary
18 penalties under Cal. Ins. Code § 1858.07.

19 146. Failure to maintain documentation in support of the rate charged creates a presumption
20 of unfairly discriminatory treatment in noncompliance with Cal. Ins. Code § 1861.05 (a),
21 subject to monetary penalties under Cal. Ins. Code § 1858.07.

22 147. The number of acts in noncompliance is unknown. The number of acts in
23 noncompliance will be determined at hearing.

24 148. Respondents marketed a product called the South 52-39 Habitational Program. For
25 general liability lines Respondents' filed rating plan contained a 0.03 credibility threshold for
26 eligibility for application of the schedule rating plan. For property coverage Respondents filed
27
28

1 Individual Risk Premium Modification⁶ (IRPM) plan had a \$1,000 premium threshold for
2 schedule rating. A significant number of general liability policies were schedule rated even
3 though they did not meet 0.03 credibility threshold and were therefore ineligible for schedule
4 rating pursuant to Respondents' filed rating plan. Similarly a significant number of property
5 policies were rated using the Individual Risk Premium Modification (IRPM) premium
6 modification plan even though these risks did not meet the \$1,000 premium threshold for
7 schedule rating and were therefore not eligible for premium modification pursuant to
8 Respondents' filed rating plan. A significant number of those policies had been improperly
9 debited which resulted in excessive rates being charged.

10 149. Respondents' inconsistent application of rating rules was in noncompliance with the Cal.
11 Ins. Code § 1861.05 subject to monetary penalties under Cal. Ins. Code § 1858.07 as it resulted
12 in excessive and unfairly discriminatory rates.

13 150. Respondents' inconsistent application of rating rules is in noncompliance with Cal. Ins.
14 Code § 1861.01 (c), subject to monetary penalties under Cal. Ins. Code § 1858.07 as the rules
15 were not applied in a manner consistent with the rules in the approved rate filing.

16 151. The number of acts in noncompliance is unknown. The number of acts in
17 noncompliance will be determined at hearing.

18 152. A significant number of South 52-39 Habitational policies contained modifications made
19 by applying schedule rating or IRPM modification that changed the premium amount as
20 compared to the prior policy term. However, there was no documentation describing the
21 material change in risk justifying these modifications. There was also inadequate documentation
22 in the file relating to IRPM modifications that resulted in IRPM debits.

23 153. Failure to maintain documentation in support of the rate charged was in noncompliance
24 Cal. Code Regs., tit. 10, § 2360.6, and therefore in noncompliance with the enabling statute,
25 Cal. Ins. Code § 1857, subject to monetary penalties under Cal. Ins. Code § 1858.07.

26 ⁶ Individual Risk Premium Modification (IRPM) was the sum of judgment rating factors (debits or credits) assigned
27 to distinguish the insured's characteristics from the average insured in their class, which are not already recognized in
28 the rating process. The judgment rating factor was applied to the premium to develop the modified premium.
Examples include the insured's safety program, financial condition, and overall management attributes.

1 154. Failure to maintain documentation in support of the rate charged creates a presumption
2 Respondents applied rates that were excessive, inadequate, unfairly discriminatory or otherwise
3 in violation of the law in noncompliance with Cal. Ins. Code § 1861.05 (a), subject to monetary
4 penalties under Cal. Ins. Code § 1858.07

5 155. The number of acts in noncompliance is unknown. The number of acts in
6 noncompliance will be determined at hearing.

7 156. In rating South 52-39 Habitational policies Respondents failed to apply their filed rating
8 plan which contained published ISO rates. Per Respondents filed rating plan ISO rates were to
9 be applied to three commonly used general liability classification codes. Having filed the
10 published ISO rates Respondents were required to use those ISO rates in rating South 52-39
11 Habitational policies.

12 157. Failure to adhere to filed ISO rates and instead relying on unfiled rates was in
13 noncompliance with Cal. Ins. Code § 1861.01 (c), subject to monetary penalties under Cal. Ins.
14 Code § 1858.07.

15 158. Failure to adhere to filed ISO rates and instead relying on unfiled rates was in
16 noncompliance with Cal. Ins. Code § 1861.05, subject to monetary penalties under Cal. Ins.
17 Code § 1858.07 as application of unfiled underwriting guidelines necessarily resulted in rate
18 that are excessive, inadequate, unfairly discriminatory or otherwise in violation of the law.

19 159. The number of acts in noncompliance is unknown. The number of acts in
20 noncompliance will be determined at hearing.

21 160. In rating South 52-39 Habitational policies a significant number of policies were rated as
22 being located in the incorrect rating district which caused incorrect loss costs to be applied.

23 161. Respondents' inconsistent application of rating rules was in noncompliance with the Cal.
24 Ins. Code § 1861.05 subject to monetary penalties under § Cal. Ins. Code 1858.07.

25 162. The number of acts in noncompliance is unknown. The number of acts in
26 noncompliance will be determined at hearing.

27 163. In rating South 52-39 Habitational policies a significant number of policies were placed
28 in incorrect protection classes.

1 164. Respondents' inconsistent application of rating rules was in noncompliance with the Cal.
2 Ins. Code § 1861.05 subject to monetary penalties under § Cal. Ins. Code 1858.07.

3 165. The number of acts in noncompliance is unknown. The number of acts in
4 noncompliance will be determined at hearing.

5 166. In rating South 52-39 Habitational policies the underwriting guidelines required at least
6 90% insurance to value subject to a minimum \$65 per square foot replacement cost adequacy
7 factor. The underwriting files contained no documentation that any analysis was performed to
8 ensure that risks were properly insured to value per the underwriting guidelines. In addition
9 there was no procedure in place to determine whether the \$65 per square foot replacement cost
10 adequacy amount was met as required by the underwriting guidelines.

11 167. Failure to maintain documentation in support of the rate charged was in noncompliance
12 Cal. Code Regs., tit. 10, § 2360.6, and therefore in noncompliance with the enabling statute,
13 Cal. Ins. Code § 1857, subject to monetary penalties under Cal. Ins. Code § 1858.07.

14 168. Failure to maintain documentation in support of the rate charged creates a presumption
15 Respondents applied rates that were excessive, inadequate, unfairly discriminatory or otherwise
16 in violation of the law in noncompliance with Cal. Ins. Code § 1861.05 (a), subject to monetary
17 penalties under Cal. Ins. Code § 1858.07.

18 169. Respondents had no procedure in place to make sure the \$65 per square foot
19 replacement cost adequacy threshold was met, as required by the underwriting guidelines. This
20 was in noncompliance with Cal. Ins. Code § 1861.05 (a), subject to monetary penalties under
21 Cal. Ins. Code § 1858.07 as it necessarily resulted in unfairly discriminatory rates.

22 170. The number of acts in noncompliance is unknown. The number of acts in
23 noncompliance will be determined at hearing.

24 171. In underwriting South 52-39 Habitational policies TRIA (terrorism coverage pursuant to
25 The Terrorism Risk Insurance Act of 2002) coverage was automatically provided without
26 charging policyholders for the coverage which result in inadequate rates being charged. There
27 was no provision in the filed rating plan for this procedure.

28 172. The application of unfiled rating rules necessarily resulted in the charging of rates that

1 are excessive, inadequate, unfairly discriminatory or otherwise in violation of the law in
2 noncompliance with Cal. Ins. Code § 1861.05 (a), subject to monetary penalties under Cal. Ins.
3 Code § 1858.07. In this case inadequate rates were identified.

4 173. The application of unfiled rating rules was in noncompliance with Cal. Ins. Code §
5 1861.01 (c), subject to monetary penalties under Cal. Ins. Code § 1858.07.

6 174. The number of acts in noncompliance is unknown. The number of acts in
7 noncompliance will be determined at hearing.

8 175. In rating South 52-39 Habitational policies Respondents failed to charge policyholders
9 for the Superior Property Program Real Estate Extended Coverage endorsement. The filed rate
10 was a \$300 flat charge for the coverage. The failure to adhere to the filed rating plan resulted in
11 the charging of inadequate rates.

12 176. The application of unfiled rating rules was in noncompliance with Cal. Ins. Code §
13 1861.01 (c), subject to monetary penalties under Cal. Ins. Code § 1858.07.

14 177. The application of unfiled rating rules necessarily resulted in the charging of rates that
15 are excessive, inadequate, unfairly discriminatory or otherwise in violation of the law in
16 noncompliance with Cal. Ins. Code § 1861.05 (a), subject to monetary penalties under Cal. Ins.
17 Code § 1858.07. In this case inadequate rates were identified.

18 178. The number of acts in noncompliance is unknown. The number of acts in
19 noncompliance will be determined at hearing.

20 179. Respondents filed a general liability rating plan that allowed for the use of rate ranges
21 for various classification codes in rating their Entertainment program. CDI allowed the use of
22 these rate ranges as long as the final rate selected was developed from assessment of the
23 individual risk attributes. It was also required that the file include full documentation relating to
24 the rationale used in the rate selection process. Respondents failed to perform the individual
25 assessment of risks as agreed. Instead policies were rated using a single rate for all members of
26 a like class code and hazard level. As such, the rating plan was not being used in the manner
27 agreed to by the parties. Nor was the rating fully documented as agreed to by the parties.

28 180. Respondents' failure to adhere to a filed and approved rating plan was in noncompliance

1 with Cal. Ins. Code § 1861.05, subject to monetary penalties under Cal. Ins. Code § 1858.07,
2 because Respondents' failure to perform the individual assessment of risks as agreed resulted in
3 rates that were excessive, inadequate, unfairly discriminatory or otherwise in violation of the
4 law.

5 181. Failure to maintain documentation in support of the rate charged was in noncompliance
6 Cal. Code Regs., tit. 10, § 2360.6, and therefore in noncompliance with the enabling statute,
7 Cal. Ins. Code § 1857, subject to monetary penalties under Cal. Ins. Code § 1858.07.

8 182. Failure to maintain documentation in support of the rate charged creates a presumption
9 Respondents applied rates that were excessive, inadequate, unfairly discriminatory or otherwise
10 in violation of the law in noncompliance with Cal. Ins. Code § 1861.05 (a), subject to monetary
11 penalties under Cal. Ins. Code § 1858.07.

12 183. The number of acts in noncompliance is unknown. The number of acts in
13 noncompliance will be determined at hearing.

14 184. Respondents failed to adopt the revised provisions of Cal. Ins. Code § 481.5 (b) (1)
15 implemented on January 1, 2006 which requires the return of unearned premium for commercial
16 lines. In commercial lines Respondents did not return premium where the amount to be returned
17 was less than \$15.

18 185. Respondents' failure to return premium was in noncompliance with Cal. Ins. Code §
19 481.5 (b).

20 186. The number of acts in noncompliance is unknown. The number of acts in
21 noncompliance will be determined at hearing.

22 **Commercial Automobile**

23 187. In rating their Ultra-Pac policies Respondents failed to apply rating factors filed in 1999
24 but applied unfiled rating factors instead. The experience rating calculations do not match those
25 contained in the plan filed and approved in 1999. There were no resultant premium overcharges
26 from the use of these factors.

27 188. The application of unfiled rating rules was in noncompliance with Cal. Ins. Code §
28 1861.01 (c), subject to monetary penalties under Cal. Ins. Code § 1858.07.

189. The number of acts in noncompliance is unknown. The number of acts in noncompliance will be determined at hearing.

190. California Commercial Multi-Peril (CMP) rates must be approved prior to use. However, The Insurance Services Office, Inc.⁷ publishes a number of individual risk rating rules which – *when filed and approved* – allow insurers flexibility in rate development. These rules are only allowed in CA for those very rare, unique risks where an insurer's normal rate does not adequately compensate for the exposure. In rating their Ultra-Pac commercial auto policies Respondents used ISO Rule 90-920, which provides that for risks over \$50,000 in premium, underwriter judgment could be used to determine the premium charged as opposed to strict adherence to filed rates. However Respondents never filed this rule with CDI and use of the rule was never approved. As of February of 2005, Rule 90-920 was replaced by ISO Rule 15, whereby the commercial automobile premium will be mutually agreed upon between the insured and the insurer. While this rule was not part of the rate filing approved by CDI Respondents applied it.

191. The application of unfiled rating rules was in noncompliance with Cal. Ins. Code § 1861.01 (c), subject to monetary penalties under Cal. Ins. Code § 1858.07

192. The number of acts in noncompliance is unknown. The number of acts in noncompliance will be determined at hearing.

193. A substantial number of Ultra-Pac policies were written on risks that did not meet the filed eligibility guidelines for the program. In some cases the rate charged was more than if policy had been written in the proper program. In other cases the rate charged was less than if the policy had been written in the proper program. Respondents did not apply the ISO rating structure that was filed and approved. Rather, Respondents utilized a different, unfiled rating structure. Also, the Ultra-Pac coverages provided did not match up with the ISO coverages. And due to these various discrepancies Respondents failed to offer the lowest premium for which the

⁷ **Insurance Services Office, Inc. (ISO)**, or ISO Mitigation, Inc., a subsidiary of Verisk Analytics, is a provider of data, underwriting, risk management and legal/regulatory services (with special focus on community fire-protection efforts and Building Code Effectiveness Evaluation) to property-casualty insurers and other clients. Headquartered in Jersey City, New Jersey, the organization serves clients with offices throughout the United States, along with international operations offices in the United Kingdom, Israel, Germany, India and China.

1 insured qualified.

2 194. Failure to adhere to filed eligibility guidelines and instead applying unfiled eligibility
3 guidelines in an inconsistent manner was in noncompliance with Cal. Ins. Code § 1861.05 (a),
4 subject to monetary penalties under Cal. Ins. Code § 1858.07 because it resulted in rates that
5 excessive, inadequate, unfairly discriminatory or otherwise in violation of the law.

6 195. Respondents' failure to adhere to their own eligibility guidelines was in noncompliance
7 with Cal. Code Regs., tit. 10, § 2360.3 as Respondents failed to offer the insured the lowest
8 premium for which the insured qualified. As a result Respondents were also in noncompliance
9 with the enabling statute, Cal. Ins. Code § 1861.05, subject to monetary penalties under Cal. Ins.
10 Code § 1858.07.

11 196. The number of acts in noncompliance is unknown. The number of acts in
12 noncompliance will be determined at hearing.

13 197. The underwriting guidelines associated with the Ultra-Pac commercial automobile
14 product allowed for "underwriting judgment" in the application of an additional credits or
15 debits, referred to as the "Management Control Factor" (MCF). Credits and debits were allowed
16 up to a maximum of 25%. Respondents failed to maintain documentation to prove policyholders
17 met the eligibility requirements or adequately support application of credits and debits.

18 198. Failure to maintain documentation in support of the rate charged was in noncompliance
19 Cal. Code Regs., tit. 10, § 2360.6, and therefore in noncompliance with the enabling statute,
20 Cal. Ins. Code § 1857, subject to monetary penalties under Cal. Ins. Code § 1858.07.

21 199. Failure to maintain documentation in support of the rate charged creates a presumption
22 Respondents applied rates that were excessive, inadequate, unfairly discriminatory or otherwise
23 in violation of the law in noncompliance with Cal. Ins. Code § 1861.05 (a), subject to monetary
24 penalties under Cal. Ins. Code § 1858.07.

25 200. The number of acts in noncompliance is unknown. The number of acts in
26 noncompliance will be determined at hearing.

27 201. Respondents marketed a commercial insurance product for waste haulers. Respondents
28 submitted a rating plan with their rate filing detailing rating rules and procedures. Respondents

1 deviated from their filed rating plan and instead utilized ISO Rule 15 to develop targeted
2 premiums for their waste haulers book of business. In applying Rule 15 the commercial
3 automobile premium was mutually agreed upon between the insured and the insurer. Rule 15 is
4 designed to be used for very rare, unique risks where an insurer's normal rate structure does not
5 adequately compensate for the exposure. Premium developed using Rule 15 were 15% to 43%
6 lower than the premium that would have been developed if the risks had been rated using the
7 filed rating plan. Respondents applied this rule to normal risks, not to rare and unusual risks. In
8 applying the rule with such frequency Respondents gained an unfair competitive advantage.
9 Respondents' application of Rule 15 may be considered a violation of the prior approval statute.
10 In addition Respondents implemented usage of a "profitability analysis" tool that utilized past
11 losses to assist the underwriter in developing the target premium for each risk. This probability
12 analysis tool was never filed with the Department. The usage of target premiums resulted in the
13 failure to rate each risk on their own merits utilizing the rates filed with CDI for that particular
14 classification and therefore necessarily resulted in unfairly discriminatory rates.

15 202. The application of unfiled rating plan, and the use of profitability analysis tool were acts
16 in noncompliance with Cal. Ins. Code § 1861.01 (c), subject to monetary penalties under Cal.
17 Ins. Code § 1858.07.

18 203. The application of unfiled rating rules necessarily resulted in the charging of rates that
19 are excessive, inadequate, unfairly discriminatory or otherwise in violation of the law in
20 noncompliance with Cal. Ins. Code § 1861.05 (a), subject to monetary penalties under Cal. Ins.
21 Code § 1858.07. In this case inadequate rates were identified.

22 204. The number of acts in noncompliance is unknown. The number of acts in
23 noncompliance will be determined at hearing.

24 205. In rating their SPIS Waste Haulers program policies were debited the maximum 25%.
25 However, these debits were not based on application of the schedule rating plan in that
26 Respondents failed to evaluate the criteria (management, employees, equipment and safety
27 organization) as required by the filed schedule rating plan. The use of schedule rating in this
28 manner was contrary to their intent. Schedule rating should evaluate the merits of each risk

1 using the characteristics in the filed plan. Modifications must be supported by factual
2 documentation. Documentation to support the debits was not maintained in the files. When
3 applying schedule rating there must be adequate supporting documentation in the file justifying
4 the rates.

5 206. Failure to apply the filed rating plan was in noncompliance with Cal. Ins. Code §
6 1861.01 (c), subject to monetary penalties under Cal. Ins. Code § 1858.07.

7 207. Failure to apply the filed rating plan resulted in inadequate and unfairly discriminatory
8 rates in noncompliance with Cal. Ins. Code § 1861.05 (a), subject to monetary penalties under
9 Cal. Ins. Code § 1858.07. In this case inadequate rates were identified.

10 208. Failure to maintain documentation in support of the rate charged was in noncompliance
11 Cal. Code Regs., tit. 10, § 2360.6, and therefore in noncompliance with the enabling statute,
12 Cal. Ins. Code § 1857, subject to monetary penalties under Cal. Ins. Code § 1858.07.

13 209. Failure to maintain documentation in support of the rate charged creates a presumption
14 Respondents applied rates that were excessive, inadequate, unfairly discriminatory or otherwise
15 in violation of the law in noncompliance with Cal. Ins. Code § 1861.05 (a), subject to monetary
16 penalties under Cal. Ins. Code § 1858.07.

17 210. The number of acts in noncompliance is unknown. The number of acts in
18 noncompliance will be determined at hearing.

19 211. Respondents did not apply their filed commercial auto experience rating plan to eligible
20 risks in their SPIS Waste Haulers program. In some cases Respondents purportedly applied ISO
21 Rule 15. However, Respondents' rate application did not include ISO Rule 15 as part of their
22 rating plan. In applying ISO Rule 15 Respondents failed to adhere to is filed rating plan. In
23 addition Respondents failed to maintain documentation sufficient to support the rates charged.

24 212. Failure to apply the filed rating plan was in noncompliance with Cal. Ins. Code §
25 1861.01 (c), subject to monetary penalties under Cal. Ins. Code § 1858.07.

26 213. Failure to apply the filed rating plan resulted in inadequate and unfairly discriminatory
27 rates in noncompliance with Cal. Ins. Code § 1861.05 (a), subject to monetary penalties under
28 Cal. Ins. Code § 1858.07. In this case inadequate rates were identified.

1 214. Failure to maintain documentation in support of the rate charged was in noncompliance
2 Cal. Code Regs., tit. 10, § 2360.6, and therefore in noncompliance with the enabling statute,
3 Cal. Ins. Code § 1857, subject to monetary penalties under Cal. Ins. Code § 1858.07.

4 215. Failure to maintain documentation in support of the rate charged creates a presumption
5 Respondents applied rates that were excessive, inadequate, unfairly discriminatory or otherwise
6 in violation of the law in noncompliance with Cal. Ins. Code § 1861.05 (a), subject to monetary
7 penalties under Cal. Ins. Code § 1858.07.

8 216. The number of acts in noncompliance is unknown. The number of acts in
9 noncompliance will be determined at hearing.

10 217. Respondents' filed Tiered Pricing Plan for their SPIS Waste Haulers program
11 categorized risks into four levels: superior; preferred; standard or substandard depending on
12 assessment of five criteria. The files did not contain adequate documentation to support the
13 placement of risks into one tier vs. the other.

14 218. Failure to maintain documentation in support of the rate charged was in noncompliance
15 Cal. Code Regs., tit. 10, § 2360.6, and therefore in noncompliance with the enabling statute,
16 Cal. Ins. Code § 1857, subject to monetary penalties under Cal. Ins. Code § 1858.07.

17 219. Failure to maintain documentation in support of the rate charged creates a presumption
18 Respondents applied rates that were excessive, inadequate, unfairly discriminatory or otherwise
19 in violation of the law in noncompliance with Cal. Ins. Code § 1861.05 (a), subject to monetary
20 penalties under Cal. Ins. Code § 1858.07.

21 220. The number of acts in noncompliance is unknown. The number of acts in
22 noncompliance will be determined at hearing.

23 221. In rating risks for the SPIS Waste Haulers program Respondents improperly used ISO
24 Rule 15, which should only be applied in rating private passenger auto. ISO Rule 31 is the rule
25 properly applied in rating commercial auto. Due to this practice trucks with a Gross Vehicle
26 Weight of 10,000 pounds or less were rated as private passenger autos. Per ISO Rule 31, pickup
27 trucks used for business purposes are to be classified as commercial light trucks and rated
28 accordingly. The private passenger auto classification (7398) does not allow for the primary and

1 secondary rating factors (03453) which should be applied to policies insuring commercial light
2 trucks. Due to the higher risks associated with commercial risks, rating these commercial
3 vehicles as private passenger auto resulted in inadequate rates.

4 222. By improperly applying ISO rule 15 Respondents charged inadequate rates in
5 noncompliance with Cal. Ins. Code § 1861.05 (a), subject to monetary penalties under Cal. Ins.
6 Code § 1858.07.

7 223. The number of acts in noncompliance is unknown. The number of acts in
8 noncompliance will be determined at hearing.

9 224. Respondents sold commercial automobile insurance through programs called Truckers
10 and Public Auto. Respondents' filed rating plans contained a scheduled rating plan with four
11 criteria to be considered for modification: driver assessment; management; equipment; and
12 safety program. Respondents' only documented evaluation of the "driver assessment" portion of
13 the plan for modification and failed to document consideration of the other three criteria.
14 Further Respondents failed to adequately document underwriting in support of the rates
15 charged.

16 225. Respondents' failure to adhere to the filed rating plan resulted in rates that were
17 excessive, inadequate, unfairly discriminatory or other in violation of the law in noncompliance
18 with § 1861.05 (a), subject to monetary penalties under Cal Ins. Code § 1858.07

19 226. Failure to maintain documentation in support of the rate charged was in noncompliance
20 Cal. Code Regs., tit. 10, § 2360.6, and therefore in noncompliance with the enabling statute,
21 Cal. Ins. Code § 1857, subject to monetary penalties under Cal. Ins. Code § 1858.07.

22 227. Failure to maintain documentation in support of the rate charged creates a presumption
23 Respondents applied rates that were excessive, inadequate, unfairly discriminatory or otherwise
24 in violation of the law in noncompliance with Cal. Ins. Code § 1861.05 (a), subject to monetary
25 penalties under Cal. Ins. Code § 1858.07.

26 228. The number of acts in noncompliance is unknown. The number of acts in
27 noncompliance will be determined at hearing.

28 229. Respondents sold commercial automobile insurance through programs called Truckers

1 and Public Auto. Respondents applied subjective debits to some risks based upon loss
2 experience, though Respondents' filed rating plan did not contain an experience rating plan or
3 otherwise allow for these types of debits. The filed rating plan did not contain an experience
4 rating plan or otherwise allow for the application of debits relating to loss history.

5 230. As the reasonableness of rates is dependent on adherence to filed rating plans where an
6 insurer applies an unfiled rating plan it creates a presumption the insurer is charging rates that
7 are excessive, inadequate, unfairly discriminatory or otherwise in violation of the law in
8 noncompliance with Cal. Ins. Code § 1861.05 (a), subject to monetary penalties under Cal. Ins.
9 Code § 1858.07.

10 231. The number of acts in noncompliance is unknown. The number of acts in
11 noncompliance will be determined at hearing.

12 232. Respondents failed to utilize filed and approved cargo rates in their commercial
13 Truckers program. This was an inadvertent system coding error. As a result policies were rated
14 incorrectly.

15 233. Failure to charge filed or approved rates was in noncompliance with the Cal. Ins. Code §
16 1861.01 (c), subject to monetary penalties under Cal. Ins. Code § 1858.07.

17 234. Respondents' failure to charge filed and approved rates was in noncompliance Cal. Ins.
18 Code § 1861.05 subject to monetary penalties under Cal. Ins. Code § 1858.07, as doing so
19 necessarily resulted in rates that were excessive, inadequate, unfairly discriminatory or
20 otherwise in violation of the law.

21 235. The number of acts in noncompliance is unknown. The number of acts in
22 noncompliance will be determined at hearing.

23 236. Respondents had an installment plan available to policyholders as a financing option in
24 both of their Truckers and Public Auto programs. The General Agents of the Respondents failed
25 to offer the installment plan to all policyholders.

26 237. Respondents' failure to offer installment plan options to all policyholders was unfairly
27 discriminatory in noncompliance with Cal. Ins. Code § 1861.05, subject to monetary penalties
28 under Cal. Ins. Code § 1858.07.

1 238. Respondents' failure to communicate all facts material to the contract was an act in
2 noncompliance with Cal. Ins. Code § 332.

3 239. The number of acts in noncompliance is unknown. The number of acts in
4 noncompliance will be determined at hearing.

5 240. Respondents' Truckers and Public Auto policies were marketed through General
6 Agents. Respondents had filed and were approved to charge a \$50 policy fee on all policies.
7 One of the Respondents' General Agents failed to disclose on the declaration page that the \$50
8 policy fee was fully earned.

9 241. The charging of the \$50 policy fee was in noncompliance with the Cal. Ins. Code §
10 1861.05, subject to monetary penalties under Cal. Ins. Code § 1858.07 as it was unfairly
11 discriminatory.

12 242. The number of acts in noncompliance is unknown. The number of acts in
13 noncompliance will be determined at hearing.

14 243. Respondents sold commercial automobile insurance through programs called Truckers
15 and Public Auto. Respondents charged policyholders a \$10 installment fee, although the rating
16 plan filed with CDI contained an installment fee of \$5. The failure to adhere to their filed rating
17 plan was unfairly discriminatory and resulted in the charging of excessive rates. The \$10
18 installment fee was not factored into Respondents' rate filing.

19 244. The charging of unfiled, unapproved rates was in noncompliance with the Cal. Ins. Code
20 § 1861.01 (c), subject to monetary penalties under Cal. Ins. Code § 1858.07.

21 245. The \$10 installment fee was an excessive rate and the charging of this rate was
22 otherwise in violation of the law in noncompliance with Cal. Ins. Code § 1861.05 (a), subject to
23 monetary penalties under Cal. Ins. Code § 1858.07.

24 246. The number of acts in noncompliance is unknown. The number of acts in
25 noncompliance will be determined at hearing.

26 247. Effective January 1, 2006 Cal. Ins. Code § 481.5 (b) (1) was revised. The revised statute
27 provides, "Whenever a policy other than a policy of personal lines insurance terminates for any
28 reason, or there was a reduction in coverage, the gross unearned premium shall be tendered to

1 the insured or, pursuant to Section 673, to the insured's premium finance company. If the policy
2 was not auditable, the gross unearned premium shall be tendered within 80 business days after
3 the insurer either receives notice of the event that generated the gross unearned premium, or
4 receives notice from a premium finance company of a cancellation. If the policy is auditable, the
5 gross unearned premium shall be tendered within 80 business days after the insured provides all
6 requested audit information to the insurer or the insurer's designee." Respondents failed to adopt
7 the revised provisions of California law implemented on January 1, 2006. Instead Respondents
8 "waived" returning premiums in commercial lines where the amount was \$15 dollars or less.
9 There is no provision in the law for an insurer to "waive" return premium.

10 248. The number of acts in noncompliance is unknown. The number of acts in
11 noncompliance will be determined at hearing.

12 **Workers' Compensation**

13 249. Cal. Ins. Code § 11735 provides in pertinent part, "Every workers' compensation insurer
14 shall file all rates, rating plans, and supplementary rate information." Respondents used an
15 unfiled rating factor of 2.25 that was applied in rating United States Longshore and Harbor
16 Workers' Compensation (USL&H) policies. Respondents' filed rating factor was 1.25.
17 Additionally, Respondents were applying an unfiled flat \$40 minimum premium charge for
18 USL&H coverage. Where a workers' compensation insurer applies rates and rating plans that
19 have not been filed with the CDI or where a workers' compensation insurer applies rates and
20 rating plans other than those filed with CDI that is an act in noncompliance.

21 250. The number of acts in noncompliance is unknown. The number of acts in
22 noncompliance will be determined at hearing.

23 251. Cal. Ins. Code § 11658 provides in pertinent part, "No insurer shall issue a workers'
24 compensation policy unless the policy was first approved by the commissioner." Respondents
25 used a Carrier Insolvencies endorsement that was not filed and approved for use in California.
26 The prior-approval requirement applies to all forms and endorsements.

27 252. The number of acts in noncompliance is unknown. The number of acts in
28 noncompliance will be determined at hearing.

1 253. Cal. Ins. Code § 11735 provides in pertinent part, “Every workers’ compensation insurer
2 shall file all rates, rating plans, and supplementary rate information.” Respondents charged an
3 unfiled expense constant⁸ of \$185 which was not included in the rate filing. This charge must be
4 filed prior to use.

5 254. The number of acts in noncompliance is unknown. The number of acts in
6 noncompliance will be determined at hearing.

7 255. Respondents’ Policyholder’s Dividend Disclosure Statement did not conform to the
8 statutory legal requirements as to format. Respondents did not issue the Policyholder’s
9 Dividend Result Disclosure Statement as required.

10 256. Respondents’ failure to adhere to the requirements relating to the Policyholder’s
11 Dividend Disclosure Statement and the Policyholder’s Dividend Result Disclosure Statement
12 was in noncompliance with Cal. Code Regs., tit. 10, § 2505.

13 257. The number of acts in noncompliance is unknown. The number of acts in
14 noncompliance will be determined at hearing.

15 258. Pursuant to Cal. Ins. Code § 11732.5 “Rates are unfairly discriminatory if, after allowing
16 for practical limitations, price differentials fail to reflect equitably the difference in expected
17 losses and expenses.” Respondents changed schedule credits / debits at renewal thereby
18 changing the rate without documenting new, material changes to the risk to account for the
19 difference in expected losses. The rates charged were therefore unfairly discriminatory.

20 259. Respondents’ practice of changing schedule credits / debits at renewal without providing
21 documentation of a material change in the risk supporting the modifications was in
22 noncompliance with Cal. Ins. Code § 11732.5.

23 260. The number of acts in noncompliance is unknown. The number of acts in
24 noncompliance will be determined at hearing.

25 261. Cal. Ins. Code § 1063.145 concerns itself with a premium surcharge associated with the
26

27 ⁸ Flat dollar amount that is added to the Pure Premium for an insured risk that is smaller than that of the lowest
28 Experience Rating band. This dollar amount is purported to serve the purpose of generating enough additional
premium dollar to cover the cost of issuing and servicing an insurance policy on a risk whose size does not readily
allow it to be experience rated.

1 California Insurance Guarantee Association (CIGA) and provides, “The statement of the
2 amount of surcharge shall include a description of and purpose for, the California Insurance
3 Guarantee Association as prescribed by this section.” Cal. Ins. Code § 11752.8 contains detailed
4 and specific notice requirements. The section requires, among other things, that the insurer
5 explain, on issuance and renewal, in “easily understandable language,” the workers’
6 compensation rating laws. Cal. Code Regs., tit. 10, § 2689.5 provides in pertinent part, “A
7 licensee shall provide to the consumer a clear and conspicuous privacy notice that accurately
8 reflects their privacy policies and practices.”

9 262. The policies issued by Respondents failed to include the CIGA surcharge statement as
10 required by Cal. Ins. Code §1063.145, the workers’ compensation insurance rating disclosure
11 language as required by Cal. Ins. Code § 11752.8 or the privacy notice as required by Cal. Code
12 Regs., tit. 10, § 2689.5.

13 263. The number of acts in noncompliance is unknown. The number of acts in
14 noncompliance will be determined at hearing.

15 264. Pursuant to Cal. Ins. Code § 11732.5 “Rates are unfairly discriminatory if, after allowing
16 for practical limitations, price differentials fail to reflect equitably the difference in expected
17 losses and expenses.” The examination of the Select Accounts workers’ compensation policies
18 found that the Respondents failed to follow their filed rating plan to ensure that eligible risks
19 were placed into the correct rate level for which they qualified. There were five different rate
20 levels written in several different underwriting companies. A significant number of policies
21 were not rated in the correct rate level for which the insured qualified. There were no examples
22 of lowest rate level being used by the underwriters.

23 265. The failure to adhere to the Respondents’ rating plan violated Cal. Ins. Code §11732.5
24 because it resulted in the charging of unfairly discriminatory rates as rates calculated in
25 haphazard manner cannot reflect equitably the difference in expected losses and expenses.

26 266. The number of acts in noncompliance is unknown. The number of acts in
27 noncompliance will be determined at hearing.

28 267. Pursuant to Cal. Ins. Code § 11732.5 “Rates are unfairly discriminatory if, after allowing

1 for practical limitations, price differentials fail to reflect equitably the difference in expected
2 losses and expenses.” Respondents did not properly apply their own underwriting guidelines in
3 their McDonald’s program. The filed underwriting guidelines provided that in order to be
4 eligible for the program the risk would have to have generated an experience modification
5 rating⁹ of 1.25 or less. However, in a significant number of cases where the risk generated an
6 experience modification rating of greater than 1.25 the risk was written in the program even
7 though it did not meet the filed eligibility threshold. Failure to adhere to the filed underwriting
8 guidelines resulted in unfair discrimination. Further the underwriting files did not include
9 documentation sufficient to support exceptions made to the underwriting guidelines. The
10 underwriting files must contain documentation to support any guideline exceptions.

11 268. Respondents’ failure to adhere to their filed underwriting guidelines violated Cal. Ins.
12 Code §11732.5 because it resulted in the charging of unfairly discriminatory rates that are not
13 based on the actual risk and resulted in the dissimilar treatment of similarly situated
14 policyholders.

15 269. Respondents’ practice of not maintaining documentation in support of rates was in
16 noncompliance with Cal. Ins. Code § 11732.5 because it makes it impossible to determined if
17 the rates charged were unfairly discriminatory.

18 270. The number of acts in noncompliance is unknown. The number of acts in
19 noncompliance will be determined at hearing.

20 271. Cal. Ins. Code § 11658 provides in pertinent part, “No insurer shall issue a workers’
21 compensation policy unless the policy was first approved by the commissioner.” The workers’
22 compensation underwriting guidelines for the McDonald's program contained reference to the
23 use of manuscript policy forms and endorsements which are not permitted in California. Current
24 law requires that all workers’ compensation policy forms and endorsements be filed and
25 approved. In addition, the rate filing records for the McDonald's program did not contain the
26 rates Respondents were using for blanket waiver of subrogation coverage.

27 ⁹ Experience Modification Rating compares the risks workers’ compensation claims experience to other companies
28 similar in size who operate in the same industry. The calculated experience modification rating is reflective of what is
expected during the ensuing year based on loss experience from previous years (experience period).

272. Respondents' use of the unfiled manuscript policy forms and endorsements was an act in noncompliance with Cal. Ins. Code § 11658.

273. The failure to adhere to the Respondents' underwriting guidelines violated Cal. Ins. Code §11732.5 because it resulted in the charging of unfairly discriminatory. Where rates are not based on the actual risk it allows for the dissimilar treatment of similar risks.

274. Cal. Ins. Code § 11735 provides in pertinent part, "Every workers' compensation insurer shall file all rates, rating plans, and supplementary rate information." The rates charged for blanket waiver of subrogation coverage were never filed in noncompliance with Cal. Ins. Code § 11735.

275. The number of acts in noncompliance is unknown. The number of acts in noncompliance will be determined at hearing.

276. Cal. Ins. Code § 11735 provides in pertinent part, "Every workers' compensation insurer shall file all rates, rating plans, and supplementary rate information." The review of the Vision Pack policies found that a \$100 premium charge was applied for foreign voluntary workers' compensation coverage. This premium charge was not filed with the Department.

277. The number of acts in noncompliance is unknown. The number of acts in noncompliance will be determined at hearing.

Other Liability

278. In rating other liability policies Respondents applied a "consent to rate" rule to develop the final premium charged. Under application of a consent to rate rule the insured consents to pay a higher premium than would be charged through strict application of the insurer's standard rating rules. In general this approach is reserved for unique and unusual risks. In most cases application of this procedure will cause the premium to be higher than if the rate was calculated using the standard base rates. A significant number of Directors and Officers policies, not considered unique or unusual risks, were rated using the consent to rate approach rather than through application of Respondents' filed and approved rates. While consent to rate rules may be applied in California without running afoul of prior approval authority, when they are used so frequently as to undermine the efficacy of the filed rates, as they were here, use of consent to

1 rate, as opposed to application of the filed rate rules, violated prior approval requirements.

2 279. Improper application of consent to rate rules violated Cal. Ins. Code §1861.01 (c),
3 subject to monetary penalties monetary penalties under Cal. Ins. Code § 1858.07.

4 280. The number of violations is unknown. The number of violations will be determined at
5 hearing.

6 281. Respondents wrote professional liability policies for, among others, accountants,
7 architects & engineers, and enrolled agents (i.e. tax specialists). Respondents used schedule
8 rating debits in rating these policies. However, in a significant number of cases, application of
9 these schedule rating credits was not supported by factual evidence relating to the risk. It was
10 also noted that schedule modifications changed from year to year without documentation of a
11 corresponding material change in risk exposure.

12 282. Failure to maintain documentation in support of the rate charged was in noncompliance
13 Cal. Code Regs., tit. 10, § 2360.6 and Cal. Ins. Code § 1857, subject to monetary penalties
14 under Cal. Ins. Code § 1858.07.

15 283. The number of violations is unknown. The number of violations will be determined at
16 hearing.

17 284. In writing policies in their Executive Liability program policies written on an excess
18 coverage basis were not rated in accordance with the filed rating methodology. Instead
19 Respondents used unfiled rating rules.

20 285 The application of unfiled rating rules was in noncompliance with Cal. Ins. Code §
21 1861.01 (c), subject to monetary penalties under Cal. Ins. Code § 1858.07.

22 286. The application of unfiled rating rules necessarily resulted in the charging of rates that
23 are excessive, inadequate, unfairly discriminatory or otherwise in violation of the law in
24 noncompliance with Cal. Ins. Code § 1861.05 (a), subject to monetary penalties under Cal. Ins.
25 Code § 1858.07.

26 287. The number of acts in noncompliance is unknown. The number of acts in
27 noncompliance will be determined at hearing.

28 288. The Employment Practices Liability underwriting manual included a minimum premium

1 rule of \$5,000 for \$1,000,000 limits and \$4,000 for \$500,000 limits. The approved filing did not
2 contain a minimum premium rule. Although there was no evidence that any policies were
3 subjected to the minimum premium requirement, the inclusion of this rule in the underwriting
4 manual creates the potential for unfair discrimination.

5 289. Rating policies using unapproved rates was in noncompliance with §1861.05 (a), subject
6 to monetary penalties monetary penalties under Cal. Ins. Code § 1858.07, as application of
7 unfiled rating rule necessarily resulted in unfair discrimination.

8 290. The number of violations is unknown. The number of violations will be determined at
9 hearing.

10 291. The Employment Practices Liability retention factor for a \$50,000 deductible was used
11 which had not been filed and approved. The filed rating plan includes retention factors up to
12 \$25,000 only.

13 292. The application of unfiled rating rules was in noncompliance with Cal. Ins. Code §
14 1861.01 (c), subject to monetary penalties under Cal. Ins. Code § 1858.07.

15 293. The number of violations is unknown. The number of violations will be determined at
16 hearing.

17 294. In underwriting the D&O Healthcare For-Profit program Respondents applied a 25%
18 debit to add Corporate Entity Coverage to a policy. The filed and approved rating plan does not
19 include a debit for addition of the Corporate Entity endorsement. All rating factors must be
20 filed and approved by the Department.

21 295. The application of unfiled rating rules was in noncompliance with Cal. Ins. Code §
22 1861.01 (c), subject to monetary penalties under Cal. Ins. Code § 1858.07.

23 296. The number of violations is unknown. The number of violations will be determined at
24 hearing.

25 297. The examination found that Respondents had failed to adopt the revised provisions of
26 California law implemented on January 1, 2006 dealing with the return of unearned premium
27 for commercial lines. For programs in the other liability line of business, return premium
28 amounts of up to \$25 were waived.

1 298. Waiving return premium violated Cal. Ins. Code § 481.5 (b).

2 299. The number of violations is unknown. The number of violations will be determined at
3 hearing.

4 **Surety**

5 300. The review of surety bonds found that risks eligible for application of the large
6 construction risk rating plan had been rated in the standard plan in violation of the Respondents'
7 filed rating plan. The failure to adhere to the filed rating plan resulted in the application of
8 inadequate and/or excessive rates.

9 301. The application of unfiled rating rules was in noncompliance with Cal. Ins. Code §
10 1861.01 (c), subject to monetary penalties under Cal. Ins. Code § 1858.07.

11 302. The application of unfiled rating rules necessarily resulted in the charging of rates that
12 were excessive, inadequate, unfairly discriminatory or otherwise in violation of the law in
13 noncompliance with Cal. Ins. Code § 1861.05 (a), subject to monetary penalties under Cal. Ins.
14 Code § 1858.07.

15 **RELIEF REQUESTED**

16 RESPONDENTS ARE HEREBY NOTIFIED that, to the extent Respondents' unlawful
17 practices are ongoing at the time of delivery of this notice, the noncompliance referred to herein
18 must be corrected within twenty (20) days of receipt of this notice. For each allegation listed
19 above, proof of system-wide correction, or other response permitted by California Insurance
20 Code section 1858.1, must also be provided within twenty (20) days of receipt of this notice.

21 RESPONDENTS ARE FURTHER NOTIFIED that if Respondents fail to make an
22 adequate or timely response, a public hearing will be set pursuant to California Insurance Code
23 sections 1858.2 and 1858.3. If, at the conclusion of the hearing, the Commissioner finds that the
24 facts as alleged above have occurred and that these facts constitute violations of the applicable
25 sections of the Insurance Code and / or Code of Regulations, as set forth, he may issue an order
26 for payment of money penalties and any other corrective action as he may deem appropriate.

27 RESPONDENTS ARE FURTHER NOTIFIED that if the noncompliance referred to
28 above constitutes willful acts involving the use of rates, rating plans, and / or rating systems in

1 violation of Chapter 9, Part 2, Division 1 of the California Insurance Code, pursuant to section
2 1858.07 of the California Insurance Code, the imposition of civil penalties will be sought in the
3 amount of \$10,000.00 for each act. This Notice may be amended to set forth additional willful
4 acts in violation of Chapter 9, Part 2, Division 1, of the California Insurance Code and to seek
5 additional penalties therefore in the amount of \$10,000.00 for each act.

6 RESPONDENTS ARE FURTHER NOTIFIED that, alternatively, in the event that those
7 acts involving the use of rates, rating plans, and / or rating systems in violation of Chapter 9,
8 Part 2, Division 1 of the California Insurance Code are not found to be willful violations of that
9 chapter, then pursuant to California Insurance Code section 1858.07, the imposition of civil
10 penalties will be sought in the amount of \$5,000.00 for each act. The Commissioner further
11 reserves the right to seek any other penalties provided for under California Insurance Code
12 section 1858.07 in the event that the acts set forth above, or such acts as may be alleged upon
13 amendment hereof, were inadvertent.

14 The California Department of Insurance reserves the right to amend this Notice of
15 Noncompliance, as new facts become available.

16
17
18 Dated: CALIFORNIA DEPARTMENT OF INSURANCE

19 By _____
20 Donald P. Hilla
21 Senior Litigation Counsel
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